Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

the life-tenant and thereby become entitled to the remainder. *Summers* v. *Summers* (Ala. 1916), 73 So. 401.

In *Lehnhoff* v. *Theine,* 184 Mo. 346, 83 S. W. 469, an estate was given to those who paid for the maintenance of testator, but the court found that the one who claimed to have fulfilled the provision was indebted to the testator, and as a matter of fact there was no person who answered the requirements. The same question was before the court in *Fiester* v. *Shepard,* 92 N. Y. 251, on an appeal from the Surrogate court, but the case was dismissed on the grounds that the lower court had no jurisdiction. The writer of the opinion in the principal case expresses his dissent from the decision of the court, and cites *Dennis* v. *Holsapple,* 148 Ind. 297, 47 N. E. 631, 46 L. R. A. 168, 62 Am. St. Rep. 526, in support of his dissent. The theory of the dissent is that where an intention clearly appears in a will that a gift should vest in a person to be ascertained upon the happening of a certain event or by the performance of certain conditions, the will is not void for uncertainty, but the gift will vest in such person who does answer the description, for example, the determination of the members of a class. See *Festing* v. *Allen,* 12 M. & W. 279. If the vesting of the gift may depend upon a contingency, then, as was decided in *Stubbs* v. *Sargon,* 2 Keen 256, an event to happen in the future may form part of the original description of the devisee. See in accord *Howard* v. *American Peace Soc.,* 49 Me. 288; *Shepard* v. *Shepard,* 57 Conn. 24, 17 Atl. 173.

WORKMEN'S COMPENSATION ACT—EXCLUSIVE CHARACTER OF REMEDY.—In an action under §§1902-1908, Code of Civ. Proc., by an intestate's surviving brothers and sisters against his employer to recover damages resulting from intestate's death caused by the employer's negligence, the employer interposed the WORKMEN'S COMPENSATION ACT as a defense, it appearing that the deceased was employed in an occupation to which the ACT applied, and that he left no wife, children, or other kin answering the description of those entitled to compensation under the ACT. The Supreme Court sustained plaintiff's demurrer to this answer. *Shanahan* v. *Monarch Engineering Company,* 156 N. Y. Supp. 143. The Appellate Division affirmed this decision in 159 N. Y. Supp 257. On appeal to the Court of Appeals it was *held* that the order of the Appellate Division be reversed on the ground that the remedy provided by the WORKMEN'S COMPENSATION ACT was exclusive, and that the surviving adult brothers and sisters of a servant killed in service had no right of action. *Shanahan* v. *Monarch Engineering Co.* (N. Y. 1916), 114 N. E. 795.

The principal case turns upon the construction of the statute providing a remedy for death of an employee. The court construes the word "exclusive," appearing in §11 of the ACT as meaning that the remedy provided by the ACT for those enumerated as beneficiaries, not only excludes any other action by them, but it also excludes any action by those not enumerated. Hence the plaintiffs in this action, not being named as beneficiaries in the ACT, cannot maintain an action. The rule of statutory construction involved

is that where a statute institutes a new remedy for an existing right, it does not take away a pre-existing remedy without express words or necessary implication. Applying this rule to the principal case, it would seem that the correct result was reached. The same rule was applied with the opposite result in *Colorado Milling & Elevator Co.* v. *Mitchell,* 26 Colo. 284, 58 Pac. 28. The Colorado statute in the latter case was, however, silent as to the exclusiveness of the remedy. If damages for wrongful death are punitive as well as compensatory, it would seem that the construction adopted by the New York Court might, in certain cases like the principal one, allow an employer to escape the consequences of his negligence; but unless the word "exclusive" as used in the New York statute can be interpreted to mean that the remedy provided is exclusive so far as provision is made for beneficiaries, and that as in this case no provision was made for adult brothers and sisters, then the old remedy applies, there is no escape from the conclusion of the New York Court.

WORKMAN'S COMPENSATION ACT—WHAT IS HAZARDOUS EMPLOYMENT?—On appeal to the New York Court of Appeals, the case of *Fogarty* v. *National Biscuit Co.,* 161 N. Y. Supp. 937, was reversed, holding it not necessary that the deceased have been himself immediately engaged in a hazardous occupation, but that the statute is satisfied if the deceased were doing an act, at the time of the accident, which was fairly incidental to the prosecution of a business enumerated in the statute as "hazardous." *Fogarty* v. *National Buscuit Co.* (N. Y. 1917), 115 N. E. —.

For a criticism of the decision in the lower court, see 15 MICH. L. REV. 528.